

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Maura Roche	Team: Squad #10	CCRB Case #: 202002304	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/20/2020 5:50 PM, Friday, 03/20/2020 6:00 PM	Location of Incident: § 87(2)(b) 44th Precinct stationhouse	Precinct: 44	18 Mo. SOL 9/20/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 03/23/2020 4:34 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 03/23/2020 4:34 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Perlmutter	25052	962683	044 PCT
2. Officers			
3. POM Jose Mercedes	00884	961948	044 DET
4. SGT Michael Bowman	00818	939932	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ryan Lopez	09227	965783	044 PCT
2. POM Giovanni Melendez	01557	949318	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Michael Bowman	Abuse: At § 87(2)(b) in the Bronx, Sergeant Michael Bowman stopped the vehicle in which an individual was an occupant.	§ 87(2)(b)
B.POM Jose Mercedes	Abuse: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes stopped the vehicle in which an individual was an occupant.	§ 87(2)(b)
C.POM Anthony Perlmutter	Abuse: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter stopped the vehicle in which an individual was an occupant.	§ 87(2)(b)
D.POM Jose Mercedes	Abuse: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes stopped § 87(2)(b)	§ 87(2)(b)
E.POM Jose Mercedes	Abuse: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes frisked § 87(2)(b)	§ 87(2)(b)
F.POM Jose Mercedes	Abuse: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes searched § 87(2)(b)	§ 87(2)(b)
G.POM Jose Mercedes	Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
H.POM Jose Mercedes	Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes restricted § 87(2)(b)'s breathing.	
I.POM Jose Mercedes	Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used a chokehold against § 87(2)(b).	
J.POM Anthony Perlmutter	Force: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter used physical force against § 87(2)(b).	
K.POM Jose Mercedes	Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used physical force against § 87(2)(b).	
L.POM Anthony Perlmutter	Off. Language: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter made remarks to § 87(2)(b) based upon gender.	
M.POM Anthony Perlmutter	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter spoke discourteously to § 87(2)(b).	
N.POM Anthony Perlmutter	Abuse: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter threatened § 87(2)(b) with the use of force.	
O.POM Anthony Perlmutter	Off. Language: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter made remarks to § 87(2)(b) based upon sexual orientation.	
P.POM Anthony Perlmutter	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter spoke discourteously to § 87(2)(b).	
Q.POM Anthony Perlmutter	Force: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter used physical force against § 87(2)(b).	
R.POM Jose Mercedes	Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used physical force against § 87(2)(b).	
S.SGT Michael Bowman	Force: At § 87(2)(b) in the Bronx, Sergeant Michael Bowman used physical force against § 87(2)(b).	
T.POM Anthony Perlmutter	Force: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter used physical force against § 87(2)(b).	
U.POM Jose Mercedes	Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used physical force against § 87(2)(b).	
V.SGT Michael Bowman	Force: At § 87(2)(b) in the Bronx, Sergeant Michael Bowman used a chokehold against § 87(2)(b).	
W.POM Anthony Perlmutter	Force: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter used physical force against § 87(2)(b).	
X.POM Jose Mercedes	Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used physical force against § 87(2)(b).	

Officer(s)	Allegation	Investigator Recommendation
Y. Officers	Abuse: At § 87(2)(b) in the Bronx, officers refused to provide their shield numbers to an individual.	
Z.POM Jose Mercedes	Abuse: At the 44th Precinct stationhouse, Police Officer Jose Mercedes did not obtain medical treatment for § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On March 23, 2020, § 87(2)(b) filed this complaint on behalf of her son, § 87(2)(b) and an unidentified individual with the CCRB by phone.

On March 20, 2020, at approximately 7:50 p.m., at the intersection of § 87(2)(b) in the Bronx, § 87(2)(b) who was leaving a schoolyard at that location, saw three officers, PO Jose Mercedes, PO Anthony Perlmutter, and Sgt. Michael Bowman, all of the 44th Precinct (PO Mercedes and PO Perlmutter have since been transferred to the 44th Precinct Detective Squad, and Sgt. Bowman has been promoted to Lieutenant and transferred to the 40th Precinct) allegedly speaking with the driver of a stopped car (**Allegations A, B, and C: Abuse of Authority – Vehicle Stop**, § 87(2)(g) § 87(2)(b) went back into the schoolyard and approached a group of approximately 30 of his friends. After talking to his friends, § 87(2)(b) started to walk back to the exit, when PO Mercedes ran up to him and allegedly told him to stop (**Allegation D: Abuse of Authority – Stop**, § 87(2)(g) PO Mercedes then allegedly patted § 87(2)(b) around his stomach, chest, arms, and legs (**Allegation E: Abuse of Authority – Frisk**, § 87(2)(g) and put his hands into both of § 87(2)(b)'s front jacket pockets (**Allegation F: Abuse of Authority – Search (of person)**, § 87(2)(g).

When PO Mercedes did not recover anything, he told § 87(2)(b) that he could leave, but § 87(2)(b) did not leave and instead started cursing at PO Mercedes. PO Mercedes then allegedly pushed § 87(2)(b) by the chest up against a fence (**Allegation G: Force – Physical force**, § 87(2)(g) and moved his arm up to § 87(2)(b)'s neck to hold him back against the fence (**Allegation H: Force – Chokehold**, § 87(2)(g) which made it difficult for § 87(2)(b) to breathe (**Allegation I: Force – Restricted Breathing**, § 87(2)(g). At the same time, PO Perlmutter restrained one of § 87(2)(b)'s arms (**Allegation J: Force – Physical Force**, § 87(2)(g). PO Mercedes released his grip on § 87(2)(b) allegedly pushed him back toward the fence (subsumed under **Allegation G**) and slapped § 87(2)(b) across his face with his hand (**Allegation K: Force – Physical Force**, § 87(2)(g). PO Mercedes, PO Perlmutter, and Sgt. Bowman then all started to walk away.

§ 87(2)(b) followed PO Mercedes, Sgt. Bowman, and PO Perlmutter, who was closest to § 87(2)(b). § 87(2)(b) yelled toward PO Perlmutter repeatedly, “Suck my dick!” and “Get out of my park!” PO Perlmutter turned back toward § 87(2)(b) and told him, “You’re a bitch!” (**Allegation L: Offensive Language – Gender**, § 87(2)(g). **Allegation M: Discourtesy – Word**, § 87(2)(g). § 87(2)(b) continued to yell at PO Perlmutter, “I’m right here!” PO Perlmutter responded, “You’re a bitch! You’re at bitch! You’re a bitch! (subsumed under **Allegations L and M**) I’ll slap you! (**Allegation N: Abuse of Authority – Threat of Force (verbal or physical)**, § 87(2)(g). **Faggot!**” (**Allegation O: Offensive Language – Sexual Orientation**, § 87(2)(g). **Allegation P: Discourtesy – Word**, § 87(2)(g). PO Perlmutter then turned around again to walk away.

§ 87(2)(b) followed PO Perlmutter and continued to yell at him, at which time PO Perlmutter turned around and told § 87(2)(b) to leave. When § 87(2)(b) did not, PO Perlmutter pushed § 87(2)(b) back away from him (**Allegation Q: Force – Physical Force**, § 87(2)(g). Sgt. Bowman and PO Mercedes turned back toward PO Perlmutter and § 87(2)(b) and Sgt. Bowman told them that § 87(2)(b) was under arrest. When PO Mercedes moved forward toward § 87(2)(b), § 87(2)(b) stepped in front of him. PO Mercedes told § 87(2)(b) to move out of the way, and, when he refused, PO Mercedes pushed him to the side and lifted him up from the ground (**Allegation R: Force – Physical Force**, § 87(2)(g). Sgt. Bowman and PO Perlmutter approached and helped PO Mercedes take § 87(2)(b) to the ground and place him into handcuffs (**Allegations S, T, and U: Force – Physical Force**, § 87(2)(g). While § 87(2)(b) was on the ground, Sgt. Bowman allegedly made contact with § 87(2)(b)'s throat with his knee (**Allegation V: Force – Chokehold**, § 87(2)(g).

As Sgt. Bowman, PO Mercedes, and PO Perlmutter were handcuffing § 87(2)(b), § 87(2)(b) rushed at PO Perlmutter and pushed him to the ground. PO Perlmutter recovered and

approached § 87(2)(b) to hold him down and handcuffed him while PO Mercedes approached and held § 87(2)(b)'s legs (**Allegations W and X: Force – Physical Force**, § 87(2)(g)). Once § 87(2)(b) and § 87(2)(b) were both handcuffed, Sgt. Bowman, PO Perlmutter, and PO Mercedes walked with them to their car. At the car, an individual from § 87(2)(b)'s group of friends asked the officers for their shield numbers, but Sgt. Bowman, PO Mercedes, and PO Perlmutter did not provide this information (**Allegation Y: Abuse of Authority – Refusal to Provide Shield Number**, § 87(2)(g)). Sgt. Bowman, PO Mercedes, and PO Perlmutter all got into the same car with § 87(2)(b) and § 87(2)(b) and drove to the 44th Precinct stationhouse.

At the 44th Precinct stationhouse, § 87(2)(b) allegedly asked PO Mercedes for medical attention for pain to his knee. PO Mercedes told § 87(2)(b) that he would request EMS for him, but § 87(2)(b) never received any medical attention (**Allegation Z: Abuse of Authority – Refusal to Obtain Medical Treatment**, § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

§ 87(2)(b) was arrested as a result of this incident for resisting arrest, obstruction of governmental administration, and disorderly conduct (**BR 01**). § 87(2)(b)

No additional summonses or arrests resulted from this incident.

Body-worn camera footage (**BR 03**) was obtained from Sgt. Bowman (**BR 04** and **BR 05**), PO Mercedes, who was using a body-worn camera assigned to PO Giovanni Melendez, also of the 44th Precinct (**BR 06** and **BR 07**), and PO Perlmutter, (**BR 08**, **BR 09**, **BR 10**, and **BR 11**). § 87(2)(g) provided a cell phone video of the incident, but he declined to identify the person who filmed it (**BR 12** and **BR 13**). There relevant videos are discussed below. There was no additional video of the incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: At § 87(2)(b) in the Bronx, Sergeant Michael Bowman stopped the vehicle in which an individual was an occupant.

Allegation (B) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes stopped the vehicle in which an individual was an occupant.

Allegation (C) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter stopped the vehicle in which an individual was an occupant.

It was disputed whether Sgt. Bowman, PO Mercedes, and PO conducted a vehicle stop. § 87(2)(b) (**BR 14**) stated that as he and a friend he declined to identify were leaving the playground at § 87(2)(b) he saw Sgt. Bowman, PO Mercedes, and PO Perlmutter speaking to the driver of a car that they had stopped. All three officers then started to walk back to their car.

§ 87(2)(b) did not provide a statement to the investigation.

Sgt. Bowman (**BR 15**), PO Mercedes (**BR 16**), and PO Perlmutter (**BR 17**) all consistently stated that they did not recall stopping any vehicles or taking any police action prior to interacting with § 87(2)(b).

A search for summonses issued by (**BR 18**) or Warrant Audits conducted by (**BR 19**) Sgt. Bowman, PO Mercedes, or PO Perlmutter yielded negative results. Sgt. Bowman (**BR 20**), PO Mercedes (**BR 21**), and PO Perlmutter (**BR 22**), did not make any memo book entries regarding a car stop that corresponded to this incident. There was no video of this portion of the incident.

§ 87(2)(g)

Allegation (D) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes stopped § 87(2)(b)

Allegation (E) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes frisked § 87(2)(b)

Allegation (F) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes searched § 87(2)(b)

Allegation (G) Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used physical force against § 87(2)(b)

Allegation (H) Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes restricted § 87(2)(b)'s breathing.

Allegation (I) Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used a chokehold against § 87(2)(b)

Allegation (J) Force: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter used physical force against § 87(2)(b)

Allegation (K) Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used physical force against § 87(2)(b)

It was disputed whether PO Mercedes stopped, frisked, and searched § 87(2)(b). The justification for and the extent of the force used against § 87(2)(b) were also disputed.

§ 87(2)(b) (BR 12) stated that as Sgt. Bowman, PO Mercedes, and PO Perlmutter were walking back to their unmarked car after speaking with the driver of the car they had stopped, they looked at § 87(2)(b) and his friend. This made § 87(2)(b) uncomfortable, so he walked back into the park toward a group of approximately 30 of his friends and told them that he thought one of the officers might try something “funny.” § 87(2)(b)'s friends told him not to worry but that he should go home, so § 87(2)(b) started walking toward one of the park's exits. As he was walking, PO Mercedes jogged up to § 87(2)(b) and told him to stop, which § 87(2)(b) did. PO Mercedes patted § 87(2)(b) around his stomach, chest, arms, and legs and put his hands into both of § 87(2)(b)'s two front jacket pockets. PO Mercedes did not recover anything from patting down and searching § 87(2)(b) so he told § 87(2)(b) he could leave. § 87(2)(b) asked PO Mercedes why he had stopped him and said, “You don't have to be doing this. I'm only 16. Suck my dick. Get out of my park!” PO Mercedes then grabbed § 87(2)(b)'s jacket by the sternum area, pushed § 87(2)(b) back against a chain-link fence, and yelled, “Don't talk in my face!” PO Mercedes moved his hand up from § 87(2)(b)'s chest area to his neck area. PO Mercedes was still holding § 87(2)(b)'s jacket, but the jacket was zipped all the way up to § 87(2)(b)'s neck, and PO Mercedes was applying pressure with his hand to the top of his jacket by his neck, which made it difficult for § 87(2)(b) to breathe, and he felt as if he were being choked. As PO Mercedes was holding § 87(2)(b) by the neck, other officers held § 87(2)(b)'s arms by his side. PO Mercedes yelled at § 87(2)(b) again, “You cannot talk in my face!” PO Mercedes let go of § 87(2)(b)'s jacket, pushed him backward into the fence, causing the back of § 87(2)(b)'s head to hit the fence, and then slapped the side of § 87(2)(b)'s face with his right hand as he walked away.

§ 87(2)(b) did not provide a statement to the investigation.

Cell phone video provided by § 87(2)(b) (BR 12 and BR 13) and body-worn camera footage from Sgt. Bowman (BR 04 and BR 05) capture a portion of this incident.

Cell phone video begins with the person holding the camera approaching a chain-link fence inside of the school yard. At 00:05 seconds, PO Mercedes is standing face-to-face with § 87(2)(b) who has his back against the fence. PO Mercedes' right hand is by § 87(2)(b)'s head area, and his forearm is pressed against § 87(2)(b)'s chest. The left side of PO Mercedes' body is not visible in the frame. Sgt. Bowman is slightly behind PO Mercedes and to his left. A female is

standing approximately two arms' distance to PO Mercedes' right. At 00:06 seconds, PO Mercedes takes a step back from § 87(2)(b) while turning away from § 87(2)(b) and simultaneously swings his left arm toward the left side of § 87(2)(b)'s face. Any direct contact that PO Mercedes makes with § 87(2)(b)'s face is not captured on video. However, § 87(2)(b)'s head moves quickly to the right at the same time as PO Mercedes swings his arm. PO Mercedes takes two to three steps away from § 87(2)(b) while turning his head back toward where § 87(2)(b) had been standing against the fence. Sgt. Bowman and PO Mercedes then both walk away from § 87(2)(b) and the other people in the schoolyard as if to leave the location.

Sgt. Bowman's body-worn camera footage is generally consistent with the cell phone video, which begins with Sgt. Bowman standing behind PO Mercedes, who is face-to-face with § 87(2)(b). PO Mercedes' right arm is near § 87(2)(b)'s chest and head area, but specific contact is not captured. At 00:03 seconds, PO Perlmutter is on PO Mercedes' left and appears to be holding § 87(2)(b)'s right arm by the forearm and wrist area. At 00:05 seconds, PO Mercedes and PO Perlmutter release § 87(2)(b) as § 87(2)(b)'s torso and head move abruptly to his left. § 87(2)(b) immediately turns back to his right to face PO Mercedes, Sgt. Bowman, and PO Perlmutter and then backs away from them as PO Mercedes and Sgt. Bowman turn to walk away from § 87(2)(b) and the rest of the people in the schoolyard.

PO Mercedes (**BR 16**) stated that he was on patrol with Sgt. Bowman and PO Perlmutter when they observed a crowd of approximately 20 to 30 people in a schoolyard at the intersection of § 87(2)(b) which was closed to the public at that time. PO Mercedes, Sgt. Bowman, and PO Perlmutter approached the group, and, as they did so, PO Mercedes smelled marijuana and observed residue from marijuana cigars on the ground. PO Mercedes also observed a bottle of alcohol that was half full on the ground. There were numerous people within the group, who appeared to PO Mercedes to be under 21 years old, who were holding cups, which PO Mercedes suspected were filled with alcohol. There was also very loud music emanating from various locations within the schoolyard. However, PO Mercedes could not recall what the sources were or where they were located. PO Mercedes, Sgt. Bowman, and PO Perlmutter approached the crowd, explained that they were trespassing on school property, and told them that they could not be there and that they should not be smoking marijuana, drinking alcohol, or playing loud music. In response, people in the crowd started yelling and cursing at officers, saying things like, "Suck my dick!" and calling the officers "pigs" and "bozos." The officers decided to use their discretion and not arrest anyone at that time and instead told everyone to leave. Having told the crowd that they should disperse, PO Mercedes, Sgt. Bowman, and PO Perlmutter turned away to go back toward their car, at which point § 87(2)(b) waved his arms at PO Mercedes and started to push PO Mercedes's chest with both of his hands. PO Mercedes grabbed § 87(2)(b) and told him that he could not push him. § 87(2)(b) lifted one of his arms and pushed PO Mercedes off him, telling PO Mercedes that he could not be near him.

Because § 87(2)(b) had made aggressive statements, approached and pushed PO Mercedes, and raised his hand toward PO Mercedes, PO Mercedes was concerned that § 87(2)(b) was going to strike him in the face, so he grabbed § 87(2)(b) and held him by his clothes around the stomach and waist area and possibly by his chest. PO Mercedes may have been holding § 87(2)(b) against a fence, but he could not recall this. PO Mercedes estimated that the contact lasted approximately five seconds. PO Mercedes then released § 87(2)(b) and started to leave the location with Sgt. Bowman and PO Perlmutter, again using their discretion to not issue summonses to anyone or arrest anyone for trespassing in the schoolyard when it was closed or for the alcohol or marijuana. PO Mercedes did not recall ever patting down § 87(2)(b) and denied reaching into § 87(2)(b)'s pockets. PO Mercedes did not recall ever touching or hitting § 87(2)(b)'s face and explained that § 87(2)(b) moved to his left as PO Mercedes released him.

PO Mercedes viewed cell phone video provided by § 87(2)(b) (**BR 12** and **BR 13**) and Sgt. Bowman's body-worn camera footage (**BR 04** and **BR 05**), and he stated that it was consistent with his recollection. PO Mercedes reiterated that he did not slap § 87(2)(b) in the face, but that

§ 87(2)(b) was pulling away from him as PO Mercedes released him.

Sgt. Bowman's statement (**BR 15**) was generally consistent with that of PO Mercedes with the following exceptions noted. Sgt. Bowman, PO Mercedes, and PO Perlmutter were driving southbound on Walton Avenue, when Sgt. Bowman saw a male who had taken notice of the officers walk down a staircase, turn around, and then jump over a fence into the schoolyard. Sgt. Bowman, PO Mercedes, and PO Perlmutter stopped and approached the schoolyard to see what that individual had been doing. Upon entering the schoolyard, Sgt. Bowman saw a group of approximately 50 to 75 people with hookah pipes in the general vicinity. Sgt. Bowman did not recall seeing PO Mercedes approach § 87(2)(b) and he did not recall seeing PO Mercedes pat down the exterior of § 87(2)(b)'s clothes or reach into § 87(2)(b)'s jacket pockets. Sgt. Bowman also did not recall seeing § 87(2)(b) or PO Mercedes pushing each other, PO Mercedes push and hold § 87(2)(b) against a fence by his chest and neck, and he did not recall seeing PO Mercedes slap § 87(2)(b) in the face.

Sgt. Bowman viewed his body-worn camera footage and cell phone video provided by § 87(2)(b) but this did not refresh his recollection.

PO Perlmutter's statement (**BR 17**) was generally consistent with those of PO Mercedes and Sgt. Bowman with the following exceptions noted. PO Perlmutter did not recall the initial portion of this incident, noting only that upon initial approach § 87(2)(b) was yelling profanities at the officers. PO Perlmutter did not recall observing PO Mercedes pat down § 87(2)(b) or reach into any of his pockets, nor did he recall seeing PO Mercedes push § 87(2)(b) against a fence, hold him against the fence by the neck, or slap § 87(2)(b) in the face.

§ 87(2)(g)

§ 87(2)(g) it was undisputed that PO Mercedes pushed § 87(2)(b) up against the fence,

§ 87(2)(g)

However, cell phone video captured PO Mercedes holding § 87(2)(b) against the fence, releasing him, and, as he is turning to walk away, swinging his arm toward § 87(2)(b)'s head. Sgt. Bowman's body-worn camera does not capture PO Mercedes swinging his arm at § 87(2)(b)'s head, but it does capture § 87(2)(b)'s head and torso turning abruptly away from PO Mercedes at the time at which the swing occurs. § 87(2)(g)

Both videos confirmed that PO Mercedes, Sgt. Bowman, and PO Perlmutter all walked away as soon as PO Mercedes struck § 87(2)(b). PO Mercedes, Sgt. Bowman, and PO Perlmutter all consistently stated that their intention at this time was to use their discretion and to leave without making any arrests or issuing any summonses.

Patrol Guide procedure 221-01 (**BR 23**) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Duration of the action. 4) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 5) Whether the subject is actively resisting custody. 6) Whether the subject is attempting to evade arrest by flight. 7) Number of subjects in comparison to the number of MOS. 8) Size, age, and condition of the subject in comparison to the MOS. 9) Subject's violent history, if known. 10) Presence of hostile

crowd or agitators. 11) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

Members of service shall not use any level of force to punish, retaliate, or coerce a subject to make a statement.

While PO Mercedes stated that he did not strike § 87(2)(b) in the face as he released him from the fence, the investigation, based on cell phone video and Sgt. Bowman's body-worn camera footage, determined that PO Mercedes, struck the right side of § 87(2)(b)'s face with his left hand as he was walking away from § 87(2)(b). It was further undisputed by all officers that it was not their intention to take § 87(2)(b) into custody at that time or take any further enforcement action. § 87(2)(g)

Allegation (L) Offensive Language: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter made remarks to § 87(2)(b) based upon gender.

Allegation (M) Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter spoke discourteously to § 87(2)(b)

Allegation (N) Abuse of Authority: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter threatened § 87(2)(b) with the use of force.

Allegation (O) Offensive Language: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter made remarks to § 87(2)(b) based upon sexual orientation.

Allegation (P) Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter spoke discourteously to § 87(2)(b)

It was undisputed that PO Perlmutter used offensive and discourteous language toward § 87(2)(b) and that he threatened § 87(2)(b) with the use of force.

§ 87(2)(b) (BR 14) stated that after PO Mercedes released him from the fence, he approached PO Perlmutter and repeatedly told him that the officers should leave the park. § 87(2)(b) did not describe PO Perlmutter using any offensive or discourteous language toward him.

§ 87(2)(b) did not provide the investigation with a statement.

Cell phone video provided by § 87(2)(b) (BR 12 and BR 13) between 00:12 seconds and 00:55 seconds and Sgt. Bowman's body-worn camera footage (BR 04 and BR 05) between 00:19 seconds and 00:52 seconds capture this portion of the incident.

In the cell phone video, beginning at 00:12 seconds, PO Mercedes and Sgt. Bowman are walking away from the group of people in the schoolyard followed approximately 10 to 15 feet behind them by PO Perlmutter. At 00:16 seconds, § 87(2)(b) who is outside of the frame, tells PO Perlmutter, "Suck my dick!" PO Perlmutter stops walking and turns around to face § 87(2)(b) and says, "You got bodied." § 87(2)(b) walks toward PO Perlmutter until 00:19 seconds, at which point he stands stationary opposite PO Perlmutter while repeating, "Suck my dick!" People in the crowd yell for § 87(2)(b) not to touch the officers. At 00:23 seconds, PO Perlmutter takes one to two steps closer to § 87(2)(b) as § 87(2)(b) steps back away from him. At 00:25 seconds, Sgt. Bowman and PO Mercedes turn around and walk back towards PO Perlmutter. At 00:33 seconds, Sgt. Bowman says to the group while point with his right finger, "Which way are you walking? I can't see with your eyes like that." At the same time, § 87(2)(b) yells, "What? I'm right here! What?" At 00:37 seconds, just as the camera moves from PO Perlmutter toward Sgt. Bowman, PO Perlmutter says to § 87(2)(b) "Yo, you're a bitch." At 00:40 seconds, Sgt. Bowman says that § 87(2)(b) is "soft" while turning to walk away from him, but it is not clear if he is speaking to PO Perlmutter or § 87(2)(b). PO Perlmutter takes one step toward Sgt. Bowman, then stops walking and turns his face and torso toward § 87(2)(b). At 00:46 seconds, PO Perlmutter leans his face and torso forward as he says to § 87(2)(b) "You're soft. You're a Bitch! You're a bitch! You're a bitch! [unintelligible] slap you!" § 87(2)(b) responds, "Suck my dick! Suck my dick!" At 00:50 seconds, PO Perlmutter says to § 87(2)(b)

“Faggot,” and then turns and walks away.

Sgt. Bowman’s body-worn camera footage is consistent with the cell phone video but does not capture any audio.

Clips from Sgt. Bowman’s body-worn camera footage and the cell phone video provided by § 87(2)(b) were combined so show each perspective side-by-side (**BR 24**). As Sgt. Bowman’s body-worn camera footage did not have sound for this portion of video, the sound is retained from the cell phone video. This video more clearly shows the distance between PO Perlmutter and § 87(2)(b) when PO Perlmutter first says, “You’re a bitch,” at 00:23 seconds, and shows that Sgt. Bowman and PO Mercedes had both started to walk away while PO Perlmutter continued to engage with § 87(2)(b) and tells him, at 00:32 seconds, “You’re soft. You’re a Bitch! You’re a bitch! You’re a bitch! [unintelligible] slap you!”

PO Perlmutter (**BR 17**) stated that after initially telling § 87(2)(b) and the other people in the schoolyard that they should leave, he, Sgt. Bowman, and PO Mercedes all walked away and intended to leave the location. However, § 87(2)(b) followed them making threatening statements like, “Suck my dick!” and, “Fuck the police!” PO Perlmutter was more concerned with § 87(2)(b) following the officers than he was with what § 87(2)(b) was saying, and he did not feel comfortable walking away with his back toward § 87(2)(b) so he turned back toward him. PO Perlmutter told § 87(2)(b) to step back, but § 87(2)(b) did not comply and continued walking toward him such that they were less than an arm’s distance apart.

PO Perlmutter initially did not recall ever telling § 87(2)(b) “You’re a bitch,” “You’re soft. You’re a Bitch! You’re a bitch! You’re a bitch! [unintelligible] slap you!”, or “Faggot!” However, after viewing the cell phone video provided by § 87(2)(b) PO Perlmutter acknowledged telling § 87(2)(b) “You’re a bitch,” and “You’re soft. You’re a Bitch! You’re a bitch! You’re a bitch! [unintelligible] slap you!” PO Perlmutter was unable to clearly decipher the audio of him saying “faggot” during his interview, which was conducted remotely over MS Teams, and still had no recollection of having used the term or why he might have said it.

PO Perlmutter explained that he told § 87(2)(b) that he was a “bitch” in the “heat of the moment,” because there had been a physical confrontation, and that it “just happens sometimes.” PO Perlmutter also explained that he said something to the effect of “slapping” § 87(2)(b) because he considered § 87(2)(b) to be a safety risk because he was following him and because § 87(2)(b) was being physically threatening, but he could not further explain his reasoning.

Sgt. Bowman’s statement (**BR 15**) was generally consistent with that of PO Perlmutter with the following exceptions noted. As Sgt. Bowman, PO Perlmutter, and PO Mercedes were walking back to their car, § 87(2)(b) followed them and was instigating the crowd by yelling that the officers that they could not tell § 87(2)(b) and his friends what to do. Sgt. Bowman repeatedly told § 87(2)(b) to stay back, but § 87(2)(b) refused and continued to follow the officers.

PO Mercedes’ statement (**BR 16**) was consistent with those of PO Perlmutter and Sgt. Bowman with the following exceptions noted. As PO Mercedes, Sgt. Bowman, and PO Perlmutter were walking back to their car, people from the crowd followed them at a distance of approximately five to 10 feet while saying things like, “Suck my dick!” “Bozo!” “Pussy!” and other derogatory terms that PO Mercedes could not recall. § 87(2)(b) was the person making the majority of the comments, and PO Mercedes felt that he was trying to “incite a riot” by gathering approximately 20 people around him to form a “mob” behind the officers and threatening the officers by saying something along the lines of, “I’ll fuck you up!” PO Mercedes added that as § 87(2)(b) was walking toward the officers, people in the crowd were following him, which contributed to PO Mercedes belief that § 87(2)(b) was trying to create a “mob.”

The investigation determined that Sgt. Bowman, PO Perlmutter, and PO Mercedes were leaving the location when § 87(2)(b) followed them and made statements including, “Suck my dick!” to the officers. While Sgt. Bowman and PO Mercedes continued walking, PO Perlmutter stopped, turned toward to § 87(2)(b) and told him, “You got bodied,” at which point § 87(2)(b) stopped approximately five to 10 feet away from PO Perlmutter. PO Perlmutter took a

step toward § 87(2)(b) whose hands remained visible and by his sides, as § 87(2)(b) walked backward away from him and repeatedly yelled, “Suck my dick!” Sgt. Bowman and PO Mercedes walked back toward PO Perlmutter and § 87(2)(b) and Sgt. Bowman asked § 87(2)(b) “Which way are you walking?” § 87(2)(b) continued to yell at the officers, “What? I’m right here!” to which PO Perlmutter responded, “Yo, you’re a bitch.” After saying this, Sgt. Bowman says, “He’s § 87(2)(b) soft,” and all three officers start walking away.

Almost immediately, PO Perlmutter stopped, turned toward § 87(2)(b) who was approximately five feet away, and said, “You’re a bitch,” “You’re soft. You’re a Bitch! You’re a bitch! You’re a bitch! [unintelligible] slap you!” PO Perlmutter explained that he called § 87(2)(b) a “bitch” in the “heat of the moment” and because they had just had a physical interaction with § 87(2)(b). PO Perlmutter threatened to slap § 87(2)(b) because he was fearful for his safety because of § 87(2)(b)’s proximity. PO Perlmutter then called § 87(2)(b) a “faggot,” but PO Perlmutter did not recall doing this.

Patrol Guide procedure 200-02 (**BR 25**) states that the department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers are expected to maintain a higher standard of integrity than is generally expected of others, respect the dignity of each individual, and render services with courtesy and civility.

In DAO-DCT Case Number 2017-17276 (**BR 27**) the court held that language which would normally be inappropriate when dealing with civilians may be excused in the course of a violent and stressful confrontation. However, DAO-DCT Case Number 2017-17005 (**BR 28**) clarifies that officers may only use such language when a situation becomes so chaotic that their immediate need to maintain order overrides their duty to behave courteously and professionally. The language must also serve a legitimate law enforcement purpose.

Patrol Guide procedure 203-10 (**BR 26**) states that officers are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability.

Patrol Guide procedure 221-01 (**BR 23**) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Duration of the action. 4) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 5) Whether the subject is actively resisting custody. 6) Whether the subject is attempting to evade arrest by flight. 7) Number of subjects in comparison to the number of MOS. 8) Size, age, and condition of the subject in comparison to the MOS. 9) Subject’s violent history, if known. 10) Presence of hostile crowd or agitators. 11) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

Although PO Perlmutter cited safety concerns because § 87(2)(b) was following the officers and yelling, “Suck my dick!” as the reason for threatening to slap § 87(2)(b) neither PO Mercedes nor Sgt. Bowman had the same concerns at this time and did not stop to further engage with § 87(2)(b). Rather, PO Mercedes and Sgt. Bowman only turned back to PO Perlmutter and § 87(2)(b) after PO Perlmutter stopped and approached § 87(2)(b) who had backed away from him. Once Sgt. Bowman indicated to § 87(2)(b) that he should leave, he and PO Mercedes again started to walk away from the area, further indicating that they did not consider § 87(2)(b) a threat. Additionally, rather than attempting to de-escalate the situation, PO Perlmutter used inflammatory language by calling § 87(2)(b) a “bitch,” and a faggot.” § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

As this was neither a stressful nor violent situation, especially when considering PO Mercedes’ and Sgt. Bowman’s reactions, PO Perlmutter’s use of the words “bitch” and “faggot”

§ 87(2)(g), per the Patrol Guide, which prohibits discourteous and disrespectful remarks regarding another person's gender, gender identity/expression, or sexual orientation § 87(2)(g)

Allegation (Q) Force: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter used physical force against § 87(2)(b)

Allegation (R) Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used physical force against § 87(2)(b)

Allegation (S) Force: At § 87(2)(b) in the Bronx, Sergeant Michael Bowman used physical force against § 87(2)(b)

Allegation (T) Force: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter used physical force against § 87(2)(b)

Allegation (U) Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used physical force against § 87(2)(b)

Allegation (V) Force: At § 87(2)(b) in the Bronx, Sergeant Michael Bowman used a chokehold against § 87(2)(b)

Allegation (W) Force: At § 87(2)(b) in the Bronx, Police Officer Anthony Perlmutter used physical force against § 87(2)(b)

Allegation (X) Force: At § 87(2)(b) in the Bronx, Police Officer Jose Mercedes used physical force against § 87(2)(b)

It was undisputed that PO Perlmutter pushed § 87(2)(b) away from him, and that PO Perlmutter, PO Mercedes, and Sgt. Bowman used force to take § 87(2)(b) and § 87(2)(b) into custody.

§ 87(2)(b) (BR 14) stated that after he followed PO Perlmutter and told him and the other officers to leave the park, PO Perlmutter pushed § 87(2)(b) back by his chest with both of his hands. Sgt. Bowman and PO Mercedes immediately approached § 87(2)(b) at which time § 87(2)(b) stepped in front of § 87(2)(b) and told PO Mercedes, who was closest to him, that he was abusing a minor § 87(2)(b). PO Mercedes told § 87(2)(b) to turn around, and, when § 87(2)(b) refused to do so, PO Mercedes picked § 87(2)(b) up off his feet and then slammed him down face-first onto the ground. Once § 87(2)(b) was on the ground, § 87(2)(b) saw both PO Mercedes and PO Perlmutter with their knees on § 87(2)(b)'s back while Sgt. Bowman was holding § 87(2)(b)'s legs. § 87(2)(b) despite his friends urging him to leave, approached § 87(2)(b) and grabbed his hand. Sgt. Bowman, PO Mercedes, and PO Perlmutter then all pushed § 87(2)(b) away from § 87(2)(b) causing § 87(2)(b) to fall to the ground. PO Mercedes came over to § 87(2)(b), put his knee on § 87(2)(b)'s back, grabbed § 87(2)(b)'s left leg, and twisted it into an unnatural position which made § 87(2)(b) feel like his leg was going to break. PO Mercedes moved § 87(2)(b) into a sitting position and handcuffed. § 87(2)(b) saw that § 87(2)(b) was also handcuffed, but he was not sure which officers did this. PO Mercedes and PO Perlmutter then led § 87(2)(b) and § 87(2)(b) to their unmarked car and drove them to the 44th Precinct stationhouse.

§ 87(2)(b) did not provide the investigation with a statement.

Cell phone video provided by § 87(2)(b) (BR 12 and BR 13) and body-worn camera footage from Sgt. Bowman (BR 04 and BR 05) capture this portion of the incident.

In the cell phone video, beginning at 00:56 seconds, § 87(2)(b) follows PO Perlmutter, yells loudly, "Get the fuck outta my park!" and waves his arms quickly up and down in front of him. PO Perlmutter tells § 87(2)(b) to back up, and when he does not, PO Perlmutter pushes § 87(2)(b) by the upper chest area with both of his hands such that he takes at least one large step backward. At 1:00 minute, PO Mercedes and Sgt. Bowman turn around and walk back toward PO Perlmutter. § 87(2)(b) approaches PO Mercedes and stands in front of him. PO Mercedes says, "Yo, what are you doing? What are you doing? Get out of my way. What are you doing?" PO

Mercedes takes hold of § 87(2)(b)'s sweatshirt at chest level with both of his hands, moves him slightly to his right, and starts to walk past § 87(2)(b). At 1:06 minutes, PO Mercedes turns back slightly and says again, "What are you doing?" It is not clear from the frame what § 87(2)(b) had been doing.

At 1:07 minutes, PO Mercedes tells § 87(2)(b) to turn around, but he does not. At 1:10 minutes, PO Mercedes reaches for § 87(2)(b) who is outside of the frame, bends over, reaches his right arm around § 87(2)(b)'s torso as they are face-to-face, lifts § 87(2)(b) up off the ground, and holds him with his back horizontal to the ground as PO Perlmutter and Sgt. Bowman run over to assist taking § 87(2)(b) to the ground. PO Mercedes holds § 87(2)(b) by his torso and thighs while Sgt. Bowman is by § 87(2)(b)'s head and PO Perlmutter is by § 87(2)(b)'s feet. It is not clear if § 87(2)(b) is pulling away from the officers or what actions the officers are taking to restrain § 87(2)(b). At 1:22 minutes, Sgt. Bowman lifts his right leg up and swiftly brings his right knee down on the center of § 87(2)(b)'s back. § 87(2)(b) pulls his arms and upper torso away from the officers. By 1:28 minutes, Sgt. Bowman's left knee is by § 87(2)(b)'s head and neck area. At 1:30 minutes, § 87(2)(b) runs up to the officers and knocks into PO Perlmutter. Beginning at 1:33 minutes, PO Perlmutter approaches § 87(2)(b)'s feet, reaches over him, and grabs § 87(2)(b)'s arms while PO Mercedes takes him by the legs, and Sgt. Bowman pushes his torso away from § 87(2)(b). PO Perlmutter and PO Mercedes pull § 87(2)(b) onto the ground on his back. PO Mercedes keeps hold of § 87(2)(b)'s legs while PO Perlmutter holds his arms as they turn § 87(2)(b) onto his side to place him into handcuffs. At the same time, Sgt. Bowman handcuffs § 87(2)(b). At 1:50 minutes, Sgt. Bowman has his knee and shin on § 87(2)(b)'s back and upper left shoulder. At 2:21 minutes, PO Perlmutter lifts § 87(2)(b) up from the ground into a standing position, and he and the other officers, along with § 87(2)(b), all walk toward the police vehicle.

Sgt. Bowman's body-worn camera footage is generally consistent with the cell phone video of the incident. Beginning at 00:58 seconds, Sgt. Bowman and PO Mercedes turn back toward PO Perlmutter and § 87(2)(b) who is already walking backward away from PO Perlmutter. (Sgt. Bowman's body-worn camera footage does not capture PO Perlmutter pushing § 87(2)(b). At 1:00 minute, Sgt. Bowman says, "He § 87(2)(b) goes." Sgt. Bowman follows § 87(2)(b) until 1:08 minutes, when he turns back toward PO Mercedes, who is reaching for and lifting § 87(2)(b) up from the ground. At 1:15 minutes, the officers put § 87(2)(b) on the ground face up with his lower back and buttocks coming into contact with the ground first. At 1:29 minutes, § 87(2)(b) pushes PO Perlmutter to the ground. PO Perlmutter rolls away, stands up, then returns to § 87(2)(b) and grabs him by the upper body near the hood of his coat. Sgt. Bowman instructs, "Get him § 87(2)(b) off." PO Perlmutter and PO Mercedes lift § 87(2)(b) off § 87(2)(b) and pull him down to the ground by § 87(2)(b)'s feet. At 1:42 minutes, § 87(2)(b) yells, "Ah! You're on my throat!" However, § 87(2)(b)'s head and neck area are not in the frame, and it is not clear what contact is being made with his throat.

PO Perlmutter (BR 17) stated that he felt uncomfortable when § 87(2)(b) followed him and the other officers and did not want to have his back turned toward him, so he turned and told § 87(2)(b) to back up. When § 87(2)(b) did not comply, PO Perlmutter pushed him lightly backward by the chest. PO Perlmutter then saw PO Mercedes trying to place § 87(2)(b) into custody. PO Perlmutter had not witnessed the events that led to this. When PO Perlmutter first saw PO Mercedes with § 87(2)(b) there were both standing up, and, as PO Perlmutter approached to assist, PO Mercedes took § 87(2)(b) down to the ground. Once on the ground, § 87(2)(b) resisted PO Perlmutter and PO Mercedes as they tried to handcuff him by tensing his arms. PO Perlmutter could not recall if Sgt. Bowman was assisting him and PO Mercedes, and, although PO Perlmutter was holding § 87(2)(b) down to the ground, PO Perlmutter could not recall how they were doing this, and he did not recall if he or any of the other officers present had their knees on § 87(2)(b)'s back or neck area. Specifically, he could not recall seeing Sgt. Bowman with his knee on § 87(2)(b)'s neck or back at any point while they were trying to handcuff him, and he

did not recall hearing § 87(2)(b) say that an officer was on his throat.

Before PO Perlmutter was able to get § 87(2)(b) into the handcuffs, § 87(2)(b) approached him from behind and threw his body onto PO Perlmutter, knocking him to the ground. PO Perlmutter righted himself, then grabbed § 87(2)(b) and he and PO Mercedes placed him into handcuffs. PO Perlmutter initially stated that § 87(2)(b) did not resist, and PO Perlmutter could not recall if he or PO Mercedes needed to use any force to get § 87(2)(b) into handcuffs. However, after viewing cell phone video, PO Perlmutter recalled that § 87(2)(b) had been pulling his arms away from the officers as well as kicking his legs to avoid being taken into custody. PO Perlmutter did not recall if PO Mercedes was holding § 87(2)(b)'s legs while they were handcuffing him and did not ever see PO Mercedes pulling or twisting § 87(2)(b)'s legs.

PO Mercedes' statement (**BR 16**) was generally consistent with that of PO Perlmutter with the following exceptions noted. PO Mercedes turned around when he heard § 87(2)(b) yelling profanities at the officers. As he turned, Sgt. Bowman told him and PO Perlmutter to arrest § 87(2)(b). When PO Mercedes approached § 87(2)(b), § 87(2)(b) stepped between him and § 87(2)(b) and grabbed PO Mercedes by the waist and held him by his waistband. PO Mercedes grabbed § 87(2)(b) by the front of his jacket and moved him to the side so that he could continue toward § 87(2)(b). However, before he could clear § 87(2)(b) from the area, § 87(2)(b) wrapped his arm around PO Mercedes' neck, placing him in a headlock and applying pressure to his neck. At the same time, PO Mercedes felt § 87(2)(b) reaching around his waist by his firearm. PO Mercedes could not tell whether § 87(2)(b) was trying to take his firearm or if his hand just brushed it. Regardless, PO Mercedes pushed § 87(2)(b)'s hand away from his firearm and instructed him to stop resisting and to give him his hands.

When § 87(2)(b) refused to comply and did not release his grip around PO Mercedes' neck, PO Mercedes brought § 87(2)(b) to the ground. PO Mercedes did not recall lifting § 87(2)(b) to the ground and explained that he was trying to pull § 87(2)(b) off of him while taking him to the ground. PO Mercedes denied ever slamming § 87(2)(b) to the ground. As officers were handcuffing § 87(2)(b), he was moving on the ground, and he scraped the side of this face on the ground himself. PO Mercedes denied causing any injuries to § 87(2)(b). PO Mercedes could not recall if he ever saw Sgt. Bowman with his knee near or on § 87(2)(b)'s neck while he was trying to handcuff § 87(2)(b). When § 87(2)(b) knocked PO Perlmutter to the ground, PO Mercedes went to assist, and he and PO Perlmutter handcuffed § 87(2)(b) who was pulling away and kicking his feet. PO Mercedes held § 87(2)(b)'s legs still, but he denied twisting them and denied ever putting his knee on § 87(2)(b)'s back. PO Mercedes did not recall seeing PO Perlmutter's knee on § 87(2)(b)'s back, and he could not recall the specific actions he and PO Perlmutter took to get § 87(2)(b) into handcuffs.

Sgt. Bowman's statement (**BR 15**) was generally consistent with those of PO Perlmutter and PO Mercedes with the following exceptions noted. When § 87(2)(b) continued to refuse to comply with commands to back away, Sgt. Bowman decided to arrest § 87(2)(b) for disorderly conduct because he was agitating his crowd of friends, was refusing to disperse, and because the crowd outnumbered the officers present. Sgt. Bowman told PO Mercedes and PO Perlmutter something along the lines of, "He's § 87(2)(b) gonna go." Sgt. Bowman turned toward PO Mercedes when he heard yelling and saw § 87(2)(b) pulling away from PO Mercedes. PO Mercedes grabbed at § 87(2)(b) and pulled him to the ground, but Sgt. Bowman did not recall seeing PO Mercedes lift § 87(2)(b) up, and he did not recall seeing PO Mercedes bring § 87(2)(b) down face first to the ground. Once on the ground, Sgt. Bowman and PO Perlmutter both grabbed § 87(2)(b)'s hands. However, § 87(2)(b) was pulling his arms away from the officers while a crowd of people was forming around them.

After § 87(2)(b) pushed PO Perlmutter to the ground, Sgt. Bowman focused on handcuffing § 87(2)(b) while PO Mercedes and PO Perlmutter handcuffed § 87(2)(b). Sgt. Bowman did not recall ever applying pressure with his knee to § 87(2)(b)'s back, neck, or anywhere else on his body, and he did not ever hear § 87(2)(b) complain about difficult

breathing or issues with his throat. Sgt. Bowman denied ever putting his knee on § 87(2)(b)'s neck or head, but he could not recall if it was on § 87(2)(b)'s upper back. Sgt. Bowman did not clearly see PO Mercedes and PO Perlmutter handcuff § 87(2)(b) and he did not recall ever seeing PO Mercedes twist § 87(2)(b)'s leg. § 87(2)(b) sustained a scrape to the side of his forehead; however, Sgt. Bowman did not know how or at what time he sustained this injury.

§ 87(2)(b) was arrested as a result of this incident for resisting arrest, obstruction of governmental administration, and disorderly conduct (**BR 01**). § 87(2)(b)'s arrest report noted that officers used a forcible takedown to overcome resistance/aggression. § 87(2)(b) was also arrested as a result of this incident, § 87(2)(b).

TRIs prepared for the incident were generally consistent with officer statements. In regard to § 87(2)(b) (**BR 29, BR 30, and BR 31**), Sgt. Bowman and PO Mercedes used a forcible takedown to overcome resistance/aggression, in defense of others, and in defense of self. The narrative sections explain that while trying to apprehend § 87(2)(b), § 87(2)(b) posed officers away from § 87(2)(b). § 87(2)(b) was "brought to the ground to gain compliance by Sgt. Bowman and PO Mercedes." § 87(2)(b) sustained a small laceration above his left eye. In regard to § 87(2)(b) (**BR 32, BR 33, and BR 34**), PO Perlmutter and PO Mercedes used a forcible takedown to overcome resistance/aggression, in defense of others, and in defense of self. The narrative section explains that while officers attended a "disorderly group," § 87(2)(b) interfered with officers as they were placing § 87(2)(b) into custody by pushing "officers" off of § 87(2)(b) and to the ground. § 87(2)(b) was "forcible taken to the ground and placed into custody without further incident." There were no injuries noted to § 87(2)(b) at that time.

The investigation determined that § 87(2)(b) continued to follow PO Perlmutter, PO Mercedes, and Sgt. Bowman and approached within an arm's distance of PO Perlmutter, who told § 87(2)(b) to back up. When § 87(2)(b) did not comply and, instead, continued yelling loudly and waving his hands in front of his face, PO Perlmutter pushed him back. Sgt. Bowman determined, at this time, that § 87(2)(b) was under arrest for disorderly conduct for failing to comply with orders to disperse, yelling and following the officers, and agitating his crowd of friends, which outnumbered the officers.

When PO Mercedes moved forward to arrest § 87(2)(b), § 87(2)(b) stepped between them and refused to comply with repeated commands from PO Mercedes to get out of his way. While PO Mercedes stated that § 87(2)(b) grabbed his neck and reached in the general vicinity of his firearm, this was not captured on camera. However, § 87(2)(b) was captured refusing to leave and refusing to comply with orders to put his hands behind his back, at which time PO Mercedes lifted him from the ground. Although § 87(2)(b) alleged that PO Mercedes slammed § 87(2)(b) face-first down to the ground, video footage captured PO Mercedes, Sgt. Bowman, and PO Perlmutter all lower § 87(2)(b) down to the ground onto his buttocks and lower back, at which point § 87(2)(b) turns over onto his stomach and pulls away as Sgt. Bowman, PO Mercedes, and PO Perlmutter try to pull his hands behind his back to handcuff him.

Video footage captures Sgt. Bowman's knee in the general vicinity of § 87(2)(b)'s neck as Sgt. Bowman handcuffs him and also captures § 87(2)(b) say to Sgt. Bowman, "You're on my throat." However, Sgt. Bowman did not recall this, this is not clearly captured on camera, § 87(2)(b) did not provide a statement regarding the incident, and none of the other officers or § 87(2)(b) saw this occur.

While Sgt. Bowman, PO Mercedes, and PO Perlmutter were trying to restrain § 87(2)(b), § 87(2)(b) rushed at the officers and, using his body weight, pushed PO Perlmutter off § 87(2)(b) and onto the ground. PO Perlmutter rolled into a standing position and immediately moved toward § 87(2)(b) with PO Mercedes to handcuff § 87(2)(b) who pulled his arms and feet away from them. While § 87(2)(b) alleged that PO Mercedes grabbed his leg and twisted it into an unnatural position, this is not captured on camera, PO Mercedes denied doing anything other than holding § 87(2)(b)'s legs still, and no one else witnessed this.

At some point while officers were trying to handcuff § 87(2)(b), § 87(2)(b)

sustained a scrape to the side of his forehead. However, it was not clear from the video footage how this occurred, § 87(2)(b) did not provide a statement about the injury, and none of the officers present recalled specifically how § 87(2)(b) sustained the injury. Once Sgt. Bowman handcuffed § 87(2)(b) and PO Mercedes and PO Perlmutter handcuffed § 87(2)(b) they lifted both of them into standing positions and started to walk toward their car.

Patrol Guide procedure 221-01 (**BR 23**) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody. In determining whether the use of force is reasonable, members of the service should consider the following: 1) The nature and severity of the crime/circumstances. 2) Actions taken by the subject. 3) Duration of the action. 4) Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders. 5) Whether the subject is actively resisting custody. 6) Whether the subject is attempting to evade arrest by flight. 7) Number of subjects in comparison to the number of MOS. 8) Size, age, and condition of the subject in comparison to the MOS. 9) Subject's violent history, if known. 10) Presence of hostile crowd or agitators. 11) Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence

§ 87(2)(g)

Once Sgt. Bowman determined that § 87(2)(b) was going to be arrested, § 87(2)(g)

, when § 87(2)(b) refused repeated instructions to clear the area, for PO Mercedes to take him into custody for interfering with § 87(2)(b)'s arrest. § 87(2)(g)

§ 87(2)(g)

It was undisputed that § 87(2)(b) pushed PO Perlmutter off § 87(2)(b) as he was trying to handcuff § 87(2)(b) and that when PO Perlmutter and PO Mercedes tried to restrain him, he was moving his body. While § 87(2)(b) alleged that PO Mercedes twisted his leg into a painful position, this was not captured on video and PO Mercedes denied doing this. § 87(2)(g)

Allegation (Y) Abuse of Authority: At § 87(2)(b) in the Bronx, officers refused to provide their shield numbers to an individual.

It was undisputed that Sgt. Bowman, PO Mercedes, and PO Perlmutter did not provide their shield numbers to an individual filming the incident with his cell phone.

This portion of the incident was not alleged by § 87(2)(b) (**BR 14**), but it was captured on cell phone video provided by § 87(2)(b) (**BR 12** and **BR 13**) and Sgt. Bowman's body-worn camera (**BR 04** and **BR 05**).

In the cell phone video, beginning at 2:45 minutes, the person holding the cell phone

follows Sgt. Bowman, PO Mercedes, and PO Perlmutter, who are taking § 87(2)(b) and § 87(2)(b) to their car, which is double parked in the middle of the street. At 2:51 minutes, the person holding the phone zooms the camera toward PO Perlmutter and says, “Yo! What’s your badge bro?” PO Perlmutter turns slightly to his left toward this person as he holds § 87(2)(b) by the back passenger side door and then turns back to § 87(2)(b) to guide him into the car. The person holding the phone then focuses the camera on PO Mercedes, who is walking with his back turned to him toward Sgt. Bowman, who is at the back driver’s side of the car with § 87(2)(b) and says again, “Yo, bro! What’s your badge, bro? I’m not even gonna lie. What’s your badge, bro? Yo! What’s your badge, bro?” At 3:10 minutes, the person holding the phone says again, “Yo! What’s your badge bro. I’m asking you a question.” The camera focuses on PO Mercedes, who is walking around the back of the car toward PO Perlmutter on the back passenger side. At 3:13 minutes, the person points toward PO Mercedes, who has moved to the front passenger side of the car, and says, “Nah! I’m talking to this dumb motherfucker.” PO Mercedes does not look toward the person holding the phone or otherwise acknowledge him. It is not clear from the video where the person holding the phone is standing in relation to the officers, as he appears to zoom in on and then away from the officers and the car.

Sgt. Bowman’s body-worn camera footage is generally consistent with the cell phone video. Beginning at 2:40 minutes, PO Perlmutter is standing by the back passenger side of the car with § 87(2)(b) as Sgt. Bowman walks with § 87(2)(b) to the back driver’s side of the car. At 2:52 minutes, § 87(2)(b) yells, “Yo § 87(2)(b)! Call my mom! I got headache problems, bro.” At 2:53 minutes, a group of approximately three to five people are standing on the sidewalk approximately 20 to 30 feet away from the car. One of those people says “...badge bro...” but this is only faintly audible. At 2:55 minutes, this same person says, “your badge, bro!” It is not clear who is speaking or from whom they are requesting the information. PO Perlmutter and PO Mercedes both have their backs to the group of people, and Sgt. Bowman is facing them and is speaking with § 87(2)(b) who is telling him that he suffers from headache problems. At 3:09 minutes, that same person repeats, “Yo! What’s your badge bro? I’m asking you a question!” It is not clear to whom this person is talking. At 4:07 minutes, Sgt. Bowman gets in the back of the car, and they drive to the 44th Precinct stationhouse.

§ 87(2)(b) did not provide a statement to the investigation, and § 87(2)(b) declined to identify the person who had filmed to footage that he provided to the investigation.

PO Perlmutter (**BR 17**), PO Mercedes (**BR 16**), and Sgt. Bowman (**BR 15**) all provided generally consistent statements. PO Perlmutter, PO Mercedes, and Sgt. Bowman did not initially recall anyone asking for their shield numbers. Having watched the cell phone video, PO Perlmutter recalled that someone was asking for badge numbers, but he was not sure who they were talking to and was primarily concerned with getting § 87(2)(b) safely into the back of the police car, so he ignored the person. Sgt. Bowman and PO Mercedes both recalled that people in the crowd around the car were yelling loudly at them, but they both noted that they were focused on leaving the location safely and did not clearly discern what anyone was saying, nor did they recall anyone asking for their shield numbers at the time.

While cell phone video and body-worn camera footage of this portion of the incident captures an individual asking officers for their “badge” numbers, neither of the videos clearly captures where this individual is standing in relation to the officers, nor does the individual specify to the officers whose badge number he is requesting. Although the cell phone video zooms in on specific officers, the verbal request does not differentiate between PO Perlmutter, PO Mercedes, or Sgt. Bowman nor does the person filming directly approach any of the officers to request this information.

Given that the exact location of the individual requesting the officer’s shield numbers was unclear, that the requests were worded generally and not toward any specific officer, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (Z) Abuse of Authority: At the 44th Precinct stationhouse, Police Officer Jose Mercedes did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) (BR 14) stated that when he got to the 44th Precinct stationhouse, he told PO Mercedes that his knee hurt and requested an ice pack. When PO Mercedes told him that he did not have an ice pack, § 87(2)(b) asked PO Mercedes to call EMS for him. PO Mercedes told § 87(2)(b) that he would call EMS and then took § 87(2)(b) to a juvenile room while § 87(2)(b) was brought to the holding cell area. A few hours later, § 87(2)(b)'s brother came to pick him up, and he was released into his brother's custody. While at the stationhouse, § 87(2)(b) never received medical attention for his knee.

PO Mercedes (BR 16) stated that when they got to the 44th Precinct stationhouse, an officer, he was not sure who, requested that an ambulance respond to stationhouse for either § 87(2)(b) or § 87(2)(b). PO Mercedes officered medical attention to both § 87(2)(b) and § 87(2)(b) but he could not recall what their responses were, and he was not sure if either ended up receiving medical attention from EMTs when they arrived.

PO Perlmutter (BR 17) did not recall if § 87(2)(b) requested medical attention or if he received any, and he noted that § 87(2)(b) did not appear to him to be injured or otherwise in need of medical attention.

Sgt. Bowman's statement (BR 15) was consistent with those of PO Mercedes and PO Perlmutter. Sgt. Bowman did not recall if § 87(2)(b) requested or received medical attention, and he did not appear to Sgt. Bowman to be injured or in need of medical attention.

Body-worn camera footage from PO Perlmutter's camera (BR 08 and BR 09) captures this portion of the incident. (This camera fell to the ground during the initial portion of the incident. PO Mercedes picked up the camera and subsequently used it himself.) Beginning at 2:30 minutes, PO Mercedes is opposite the front desk inside the 44th Precinct stationhouse with § 87(2)(b) and § 87(2)(b). PO Mercedes holds the camera so that it is focused on § 87(2)(b) who is standing. § 87(2)(b) is seated with Sgt. Bowman standing next to him. At 3:10 minutes, as PO Mercedes is walking up to the desk, § 87(2)(b) says, "Yo, my leg hurts. Can I please sit down?" A passing uniformed officer pushes a chair toward § 87(2)(b) who sits. PO Mercedes takes § 87(2)(b) up to the desk and searches him. At 10:45 minutes, as he is filling out § 87(2)(b)'s pedigree sheet, PO Mercedes asks § 87(2)(b) "Do you have any disabilities? High blood pressure, diabetes? Do you need medical attention?" § 87(2)(b) responds, "I don't got [unintelligible]. I got cholesterol." PO Mercedes says, "Cholesterol? Okay. Okay. Do you need, do you take medications?" § 87(2)(b) shakes his head, "no." At 11:03 minutes, PO Mercedes asks again, "Do you need medical attention?" § 87(2)(b) answer, "No," and shakes his head. PO Mercedes notes this on the pedigree sheet. At 12:10 minutes, PO Mercedes takes § 87(2)(b) into the juvenile room.

Although § 87(2)(b) alleged that he requested that PO Mercedes for his leg and that PO Mercedes told him he would request EMS but did not do so, body-worn camera footage clearly captures § 87(2)(b) tell PO Mercedes that he did not require medical attention.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (**BR 36**).
- This is the first complaint to which § 87(2)(b) has been a party (**BR 37**).
- Sgt. Bowman has been a member of service for 16 years and has been a subject in eight CCRB complaints and 18 allegations, two of which were substantiated.
 - 201808752 involved substantiated allegations of property damage and seizure of property. The Board recommended Command Discipline A, and the NYPD imposed Command Discipline A. § 87(2)(g)
- PO Mercedes has been a member of service for five years and has been a subject in one CCRB complaints and two allegations, neither of which was substantiated. § 87(2)(g)
- PO Perlmutter has been a member of service for five years and has been a subject in three CCRB complaints and five allegations, one of which was substantiated.
 - 201808753 involved a substantiated allegation of a discourteous word. The Board recommended Instructions, and the NYPD imposed Command Level Instructions.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of November 18, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**BR 38**).

§ 87(2)(b)

Squad: 10

Investigator: Maura R. Roche SI Maura R. Roche 2/09/2022
Signature Print Title & Name Date

Squad Leader: Eric Rigie IM Eric Rigie 2/16/2022
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date